IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.53 OF 2005
IN
SECOND APPEAL NO.41 OF 2005

Rajaram @ Rajendra Chavan & Anr. ...Applicants

vs.

Arun Vasantrao Jamdar ...Respondent

Mr.N.V.Walawalkar with Mr.G.H.Keluskar for the Appellants
Mr.R.M.Agrawal with Mr.N.V.Bandiwadekar for the Respondent

CORAM: A.S.OKA,J.
DATE : MARCH 23, 2005.

P.C.:

1. Rule. Respondent waives service. Taken up for hearing forthwith.

2. The Trial Court decreed the suit for specific performance filed by the Appellants-Plaintiffs. The Appeal preferred by the Respondent has been allowed and decree for specific performance has been quashed and set aside. The Appellate Court allowed the counterclaim filed by the Respondent and directed the Appellants to hand over the possession of the suit land to the Respondent. As the Second Appeal is admitted for final hearing, decree for possession deserves to be stayed.

3. Considering the facts and circumstances of the case decree for possession cannot be stayed unconditionally considering the market value of the suit land as of today and income which may be possibly derived by the Appellants from the suit property.

4. The undertakings tendered by the Appellants in this Court are taken on record and marked 'X' and 'Y' for identification. By the said undertakings the Appellants have offered to deposit a sum of Rs.30,000/- p.a. in the Trial Court on or before 10th December of every year till the final disposal of the Appeal and have undertaken to maintain the accounts of the expenditure on cultivation of the suit lands and income from the suit lands. The undertakings are accepted. It is made clear that the undertakings are tendered and accepted without prejudice to the rights and contentions of both the parties. Apart from depositing the said amount, the Appellants will have to deposit a lumpsum amount of Rs.2,50,000/- so that the claim of the Respondent is secured.

5. Hence I pass the following order :

i) The decree for possession passed against the Appellants will stand stayed subject to the following conditions :

a) The Appellants will deposit in this Court a sum of Rs.2,50,000/- within a period of four weeks from today.

b) The Appellants will keep on depositing a sum of Rs.30,000/- per year in the Trial Court on or before 30th June of every year.

c) The Appellants will file accounts of expenditure on the cultivation of the suit land and the income received from the suit land every year on or before 30th June and the same shall be filed with the Registrar (Judicial) of this Court in a sealed envelope.

d) The Appellants will not create any third party interests and will not part with possession of the suit land in favour of any third party.

ii) In case the Appellants commit default in depositing the sum of Rs.2,50,000/- within stipulated period, the stay granted shall stand vacated automatically. If the amount is deposited within stipulated period, the Registrar General of this Court shall invest the said amount in a fixed deposit in any nationalised bank initially for a period of three years and thereafter the fixed deposit shall be renewed from time to time till the disposal of the Second Appeal.

iii) In case the Appellants commit any default in depositing the sum of Rs.30,000/- p.a. or in filing accounts, liberty to the Respondent to apply for vacating the order of stay.

iv) As and when a sum of Rs.30,000/-is deposited by the Appellants, the Respondent will be entitled to withdraw the same.

v) It is made clear that deposit of Rs.2,50,000/- in this Court and Rs.30,000/- per year by the Appellants will be without prejudice to the rights and contentions of both the parties and the withdrawal of a sum of Rs.30,000/- by the Respondent will also be without prejudice to the rights and contentions of both the parties. It is also made clear that the deposit of the aforesaid amounts by the Appellants shall be subject to further orders and final decision in the Second Appeal.

vi) In case the Appellants have deposited a sum of Rs.15,000/- in the Trial Court in accordance with the decree of the Trial Court, the said amount shall be invested by the Trial Court in fixed deposit in any nationalised bank till the disposal of the Second Appeal.

vii) Civil Application is disposed of in above terms.

. Parties to act upon an authenticated copy of this order.

JUDGE.